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June 12, 2019

Regional Freedom of Information Officer
U.S. EPA, Region 4
AFC Bldg, 61 Forsyth Street., S.W., 9th Flr (4PM/IF)
Atlanta, GA 30303-8960

Via electronic mail only

Re: Metalplate Galvanizing LP – Plant No. 1 (Permit AL0080403 and Permit ALG120093)
Metalplate Galvanizing LP – Plant No. 2 (Permit AL0080411 and Permit ALG120094)

Dear FOIA Officer:

For the past ten years, we would like to request the following documents (to include any written, recorded, electronic or graphic matter however produced, or reproduced, including, but not limited to, statements, reports, sampling data or results, e-mails, texts, notes, records, lists, logs, memoranda, correspondence, schedules, photographs, video recordings, sound recordings, and information stored in computers or other data processing equipment):

1. Any and all documents concerning or related to Alabama NPDES Permits for Metalplate Galvanizing LP – Plant No. 1 (Permit AL0080403 and Permit ALG120093) and Plant No. 2 (Permit AL0080411 and Permit ALG120094);
2. Any and all documents related to the proposed drafting or issuance of the NPDES permits referenced above;
3. Any and all documents containing or referencing any calculations used or made by USEPA or its staff concerning the proposed issuance of the NPDES permits referenced above;
4. Any and all documents discussing or supporting any decision by USEPA or its staff to require permit limitations for the draft NPDES permits referenced above;
5. Any and all documents discussing or supporting any decision by USEPA or its staff NOT to require permit limitations for the draft NPDES permits referenced above;

6. Any and all documents discussing or supporting any decision by USEPA or its staff to object to the issuance of the draft NPDES permits referenced above;
7. Any and all documents discussing or supporting any decision by USEPA or its staff NOT to object to the issuance of the draft NPDES permits referenced above;
8. Any and all documents exchanged between USEPA, to include current and previous employees, and the Alabama Department of Environmental Management (“ADEM”) related to the proposed drafting or issuance of the NPDES permits referenced above;
9. Any and all documents which reference any inspections and/or investigations USEPA has conducted at the facilities referenced above;
10. Any and all documents about other, similar NPDES permits EPA may have recommended or provided to ADEM to consider as a resource or example in the proposed drafting or issuance of the NPDES permits referenced above;
11. Any and all documents containing compliance information maintained or considered by EPA in exercising its oversight or regulatory responsibilities relative to Metalplate Galvanizing LP – Plant No. 1 and Plant No. 2.

We request, and FOIA requires, a “determination” on this record request within twenty working days after your receipt. *See* 5 U.S.C. § 552(a)(6)(A)(i). In your response, please include all reasonably segregable portions of exempt records that are themselves not exempt from disclosure. *See* 5 U.S.C. § 2552(b). Should our record request be denied, we ask that you inform us of the grounds for denial and the specific administrative appeal rights which are available. *See* 5 U.S.C. § 552(a)(6)(A)(i).

Because disclosure is in the public interest, we request that all fees for this request be waived. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Under FOIA, a disclosure is in the public interest if (1) “it is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) it “is not primarily in the commercial interest of the requester.” *Id.* FOIA’s legislative history is explicit that the fee waiver provision should be “liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987). *See also Coalition for Safe Power v. U.S. Dep’t of Energy*, Civ. No. 87-1380PA, slip op. at 7 (D.Or. July 22, 1988) (citing *Better Gov’t Ass’n v. Department of State*, 780 F.2d 86, 94 (D.C. Cir. 1986))(By enacting the fee waiver provision of FOIA, “Congress explicitly recognized the importance and the difficulty of access to governmental documents for under-funded organizations and individuals.”); *Better Gov’t Ass’n v. Department of State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986)(fee waiver intended to benefit public interest watchdogs like Riverkeeper).

Here, Riverkeeper, Inc. satisfies both prongs of the public interest inquiry.

First, disclosure will “contribute significantly to public understanding of the operations or activities of the government” because Riverkeeper will use the requested records to litigate a public interest permit appeal against ADEM, which issued the above-referenced NPDES permits without performing a reasonable potential analysis or calculating permit limitations for zinc, despite Metalplate’s long history of discharging excessive amounts of zinc to an impaired water with a zinc TMDL. Riverkeeper will use the information in its current NPDES permit appeal as well as share the information obtained from this FOIA with its members and the public. The Clean Water Act and the public interest require that NPDES permits be written in such a way so as not to cause or contribute to a violation of water quality standards. The records will help to illuminate USEPA’s oversight role of Alabama’s NPDES program, which drafts these permits and explain why these permits were issued without the performance of a reasonable potential analysis, the calculation of a zinc limitations and no consideration of the applicable TMDL.

Riverkeeper is a citizen-based nonprofit organization dedicated to improving water quality, habitat, recreation, and public health throughout our patrol area, the Black Warrior River watershed. This vital river basin is entirely contained within Alabama, America’s leading state for freshwater biodiversity. Riverkeeper works not only to protect and restore the Black Warrior River and its tributaries, but also to promote effective environmental regulation, compliance and enforcement.

The facilities that are the subject of the FOIA request are located in the Black Warrior River watershed. For years, Riverkeeper has worked with local citizens to demand improved environmental compliance and greater accountability on the part of permitting agencies toward facilities like Metalplate Galvanizing. Riverkeeper informs its members and supporters through a comprehensive website (<http://www.blackwarriorriver.org/>), electronic news bulletins, newsletters, and other publications, all of which are available free of charge to interested parties. The organization issues statements and press releases on important clean water and public interest topics, and staff regularly gives interviews to the media, makes educational presentations and speaks at conferences. Riverkeeper uses these channels to educate and engage the public in its effort to protect and restore the Black Warrior. Riverkeeper also disseminates information to the public through the following means:

Email: info@blackwarriorriver.org – 3,854 email list subscribers;

Official website: www.BlackWarriorRiver.org – 582,324 views to date;

Facebook: www.facebook.com/BlackWarriorRiverkeeper -- 21,883 people follow

Twitter: www.twitter.com/BWRiverkeeper – 10,454 “followers.”

We anticipate using the information gathered from the FOIA not only to file informed and substantive permit comments, but also to educate the public about the NPDES permitting process and

the government oversight EPA provides. The information will also be used to promote public discussion through the various means discussed. Riverkeeper will share the information and collaborate with the public and other public interest organizations which perform similar advocacy work, who in turn will share the information with their membership. The end result will be a better understanding of EPA's role in the NPDES permitting process, which will allow Riverkeeper and the public to more effectively engage in that process.

Second, disclosure "is not primarily in the commercial interest of the requester" because Riverkeeper is a nonprofit corporation with 501(c)(3) tax exempt status from the IRS. As such, the organization does not have a commercial, trade, or profit interest in the requested records. Rather, its sole interest in the requested records is to learn whether the permit was analyzed and written properly, which will further inform its members and supporters about the operations and oversight activities of the USEPA. Riverkeeper has submitted numerous FOIA requests to federal agencies in the past and has always received a fee waiver when requested.

Riverkeeper routinely receives fee waivers from other federal agencies in the category of Other (Non-Commercial) Requester. *See, e.g., In re: Shepherd Bend Mine* (6/09/10); *In re: Duck River Dam* (8/09/10); *In re: Alabama NWP 21 Permits* (1/09/11); *In re: Fleetwood Mine* (12/29/11); *In re: Alabama NWP 21 Grandfathered Permits* (9-05-13); *In re: Black Creek Mine, Burton Bend Mine No. 3, Fishtrap Mine No. 2 Revision No. 3 and the Robbins Road Mine* (3/27/15); ; *In re: Fleetwood Mine* (2) (5/26/15); *In re: Maxine Mine* (8/14/15) *In re: Shoal Creek Mine* (5/26/16); *In re: BWM Mine No. 1 and Mine No. 2* (8/31/16); *In re: Updated Files for Black Creek Mine, BWM Mine No. 1 and Mine No. 2* (3/30/17); *In re: Section 404 Mitigation Plans in the Black Warrior Watershed* (5/21/17); and *In re: Mine No. 5* (8/09/18).

Thank you for your assistance with this request. Please do not hesitate to contact me with any questions.

Sincerely,



Eva Dillard
Staff Attorney
Black Warrior Riverkeeper, Inc.